

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ESTEBAN POLONSKI, et al.,)	
)	
Plaintiff(s),)	No. C09-0038 BZ
)	
v.)	ORDER SCHEDULING
)	COURT TRIAL AND
WASHINGTON MUTUAL BANK, et)	PRETRIAL MATTERS
al.,)	
)	
Defendant(s).)	
_____)	

Following the Case Management Conference, **IT IS HEREBY ORDERED** as follows:

1. DATES

Trial Date: **Monday, 2/22/2010, 5 days**

Pretrial Conference: **Tuesday, 2/2/2010, 4 p.m.**

Last Day to Hear Dispositive Motions: **Wednesday, 12/30/2009**

Last Day for Expert Discovery: **Friday, 11/20/2009**

Last Day for Rebuttal Expert Disclosure: **Friday, 11/13/2009**

Last Day for Expert Disclosure: **Friday, 11/6/2009**

Close of Non-expert Discovery: **Friday, 10/30/2009**

2. DISCLOSURE AND DISCOVERY

The parties are reminded that a failure to voluntarily

1 disclose information pursuant to Federal Rule of Civil
2 Procedure 26(a) or to supplement disclosures or discovery
3 responses pursuant to Rule 26(e) may result in exclusionary
4 sanctions. Thirty days prior to the close of non-expert
5 discovery, lead counsel for each party shall serve and file a
6 certification that all supplementation has been completed.

7 In the event a discovery dispute arises, **lead counsel** for
8 each party shall meet in person or, if counsel are outside the
9 Bay Area, by telephone and make a good faith effort to resolve
10 their dispute. Exchanging letters or telephone messages about
11 the dispute is insufficient. The Court does not read
12 subsequent positioning letters; parties shall instead make a
13 contemporaneous record of their meeting using a tape recorder
14 or a court reporter.

15 In the event they cannot resolve their dispute, the
16 parties must participate in a telephone conference with the
17 Court **before** filing any discovery motions or other papers.
18 The party seeking discovery shall request a conference in a
19 letter filed electronically not exceeding two pages (with no
20 attachments) which briefly explains the nature of the action
21 and the issues in dispute. Other parties shall reply in
22 similar fashion within two days of receiving the letter
23 requesting the conference. The Court will contact the parties
24 to schedule the conference.

25 3. MOTIONS

26 Consult Civil Local Rules 7-1 through 7-5 and this
27 Court's standing orders regarding motion practice. Motions
28 for **summary judgment** shall be accompanied by a statement of

1 the material facts not in dispute supported by citations to
2 admissible evidence. The parties shall file a joint statement
3 of undisputed facts where possible. If the parties are unable
4 to reach complete agreement after meeting and conferring, they
5 shall file a joint statement of the undisputed facts about
6 which they do agree. Any party may then file a separate
7 statement of the additional facts that the party contends are
8 undisputed. A party who without substantial justification
9 contends that a fact is in dispute is subject to sanctions.
10 If plaintiff decides to proceed with this case without an
11 attorney, she may wish to consult a manual the Court has
12 adopted to assist *pro se* litigants in presenting their case.
13 This manual is available in the Clerk's Office and online at
14 **<http://www.cand.uscourts.gov>**.

15 Plaintiff is advised that "[a] motion for summary
16 judgment under Rule 56 of the Federal Rules of Civil Procedure
17 will, if granted, end your case. Rule 56 tells you what you
18 must do in order to oppose a motion for summary judgment.
19 Generally, summary judgment must be granted when there is no
20 genuine issue of material fact--that is, if there is no real
21 dispute about any fact that would affect the result of your
22 case, the party who asked for summary judgment is entitled to
23 judgment as a matter of law, which will end your case. When a
24 party you are suing makes a motion for summary judgment that
25 is properly supported by declarations (or other sworn
26 testimony), you cannot simply rely on what your complaint
27 says. Instead, you must set out specific facts in
28 declarations, depositions, answers to interrogatories, or

1 authenticated documents, as provided in Rule 56(e), that
2 contradict the facts shown in the defendant's declarations and
3 documents and show that there is a genuine issue of material
4 fact for trial. If you do not submit your own evidence in
5 opposition, summary judgment, if appropriate, may be entered
6 against you. If summary judgment is granted, your case will
7 be dismissed and there will be no trial." Rand v. Rowland,
8 154 F.3d 952, 963 (9th Cir. 1998).

9 In addition to **lodging** a Chambers copy of all papers, a
10 copy of all briefs shall be e-mailed in WordPerfect or Word
11 format to the following address: bzpo@cand.uscourts.gov.

12 4. SETTLEMENT

13 This case is referred for assignment to a Magistrate
14 Judge to conduct a settlement conference in November or
15 December of 2009. Counsel will be contacted by that judge's
16 chambers with a date and time for the conference.

17 5. PRETRIAL CONFERENCE

18 Not less than thirty days prior to the date of the
19 pretrial conference, the parties shall meet and take all steps
20 necessary to fulfill the requirements of this Order.

21 Not less than twenty-one days prior to the pretrial
22 conference, the parties shall: (1) serve and file a joint
23 pretrial statement, containing the information listed in
24 **Attachment 1**, and a proposed pretrial order; (2) serve and
25 file trial briefs, Daubert motions, proposed findings of fact
26 and conclusions of law, and statements designating excerpts
27 from discovery that will be offered at trial (specifying the
28 witness and page and line references); (3) exchange exhibits,

1 agree on and number a joint set of exhibits and number
2 separately those exhibits to which the parties cannot agree;
3 (4) deliver all marked trial exhibits directly to the
4 courtroom clerk, Ms. Voltz; (5) deliver one extra set of all
5 marked exhibits directly to Chambers; and (6) submit all
6 exhibits in three-ring binders. Each exhibit shall be marked
7 with an exhibit label as contained in **Attachment 2**. The
8 exhibits shall also be separated with correctly marked side
9 tabs so that they are easy to find.

10 No party shall be permitted to call any witness or offer
11 any exhibit in its case in chief that is not disclosed at
12 pretrial, without leave of Court and for good cause.

13 Lead trial counsel for each party shall meet and confer
14 in an effort to resolve all disputes regarding anticipated
15 testimony, witnesses and exhibits. Not less than eleven days
16 prior to the pretrial conference, the parties shall serve and
17 file any objections to witnesses or exhibits or to the
18 qualifications of an expert witness, and any oppositions to
19 Daubert motions. There shall be no replies.

20 A copy of all pretrial submissions, except for exhibits,
21 shall be e-mailed in WordPerfect or Word format to the
22 following address: bzpo@cand.uscourts.gov.

23 At the time of filing the original with the Clerk's
24 Office, two copies of all documents (but only one copy of the
25 exhibits) shall be delivered directly to Chambers (Room 15-
26 6688). Chambers' copies of all pretrial documents shall be
27 three-hole punched at the side, suitable for insertion into
28

1 standard, three-ring binders.

2 Dated: June 2, 2009

3
4  Bernard Zimmerman

5 United States Magistrate Judge

ATTACHMENT 1

The parties shall file a joint pretrial conference statement containing the following information:

(1) The Action.

(A) Substance of the Action. A brief description of the substance of claims and defenses which remain to be decided.

(B) Relief Prayed. A detailed statement of each party's position on the relief claimed, particularly itemizing all elements of damages claimed as well as witnesses, documents or other evidentiary material to be presented concerning the amount of those damages.

(2) The Factual Basis of the Action.

(A) Undisputed Facts. A plain and concise statement of all relevant facts not reasonably disputable, as well as which facts parties will stipulate for incorporation into the trial record without the necessity of supporting testimony or exhibits.

(B) Disputed Factual Issues. A plain and concise statement of all disputed factual issues which remain to be decided.

(C) Agreed Statement. A statement assessing whether all or part of the action may be presented upon an agreed statement of facts.

(D) Stipulations. A statement of stipulations requested or proposed for pretrial or trial purposes.

(3) Trial Preparation.

1 A brief description of the efforts the parties have
2 made to resolve disputes over anticipated testimony,
exhibits and witnesses.

3 (A) Witnesses to be Called. In
4 lieu of FRCP 26(a)(3)(A), a
5 list of all witnesses likely
6 to be called at trial, other
7 than solely for impeachment or
rebuttal, together with a
brief statement following each
name describing the substance
of the testimony to be given.

8 (B) Estimate of Trial Time. An
9 estimate of the number of
10 court days needed for the
11 presentation of each party's
12 case, indicating possible
13 reductions in time through
proposed stipulations, agreed
statements of facts, or
expedited means of presenting
testimony and exhibits.

14 (C) Use of Discovery Responses. In
15 lieu of FRCP 26(a)(3)(B), cite
16 possible presentation at trial
17 of evidence, other than solely
18 for impeachment or rebuttal,
19 through use of excerpts from
20 depositions, from
interrogatory answers, or from
responses to requests for
admission. Counsel shall
state any objections to use of
these materials and that
counsel has conferred
respecting such objections.

21 (D) Further Discovery or Motions.
22 A statement of all remaining
23 motions, including Daubert
motions.

24 **(4) Trial Alternatives and Options.**

25 (A) Settlement Discussion. A
26 statement summarizing the
27 status of settlement
negotiations and indicating
whether further negotiations
are likely to be productive.

28 (B) Amendments, Dismissals. A

1 statement of requested or
2 proposed amendments to
3 pleadings or dismissals of
4 parties, claims or defenses.

5 (C) Bifurcation, Separate Trial of
6 Issues. A statement of whether
7 bifurcation or a separate
8 trial of specific issues is
9 feasible and desired.

10 (5) **Miscellaneous.**

11 Any other subjects relevant to the trial of the action,
12 or material to its just, speedy and inexpensive
13 determination.
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ATTACHMENT 2

USDC
Case No. CV09-00038 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV09-00038 BZ
JOINT Exhibit No. _____

Date Entered _____

Signature _____

USDC
Case No. CV09-00038 BZ
PLNTF Exhibit No. _____

Date Entered _____

Signature _____

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Case No. CV09-00038 BZ
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Date Entered _____

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USDC
Case No. CV09-00038 BZ
DEFT Exhibit No. _____

Date Entered _____

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